IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA	)	
	)	NO. 3:18-cr-00117
v.	)	JUDGE RICHARDSON
	)	
DAVID BUELL	)	

ORDER

On August 23, 2019, the Court held an evidentiary hearing on Defendant's Motion to Suppress (Doc. No. 31, "the Motion"). Via the Motion, Defendant sought to suppress all evidence and statements that he alleges were obtained in violation of his Fourth, Fifth, and Fourteenth Amendment rights when law enforcement officers allegedly unlawfully stopped, searched, and interrogated him on the night of February 8, 2018. The Government had filed a response (Doc. No. 34) and supplemental response (Doc. No. 36) to the Motion.

At the outset of the August 23 hearing, Defendant represented that he no longer challenged the constitutionality of the traffic stop or the subsequent interrogation. Thus, the Court denied the Motion as moot with respect to those issues. The only remaining issue remaining was whether, assuming the traffic stopped was lawful, law enforcement's subsequent seizure of the firearm from the automobile was in violation of Defendant's Fourth amendment rights.

Under the plain-view doctrine, "if police are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant." *United States v. Herndon*, 501 F.3d 683, 692 (6th Cir. 2007) (citation omitted). When police are lawfully executing an arrest warrant, they are permitted to seize contraband that is in plain view. *See United States v. Wickizer*,

633 F.2d 900, 902 (6th Cir. 1980) (holding that seizure of rifles was valid under the plain-view doctrine when police officers observed rifles upon entering a cabin to effectuate an arrest warrant).

An officer may enter an arrestee's residence, if there is reason to believe that the arrestee is located therein at the time, in order to execute a valid arrest warrant. *United States v. Wickizer*, 633 F.2d 900, 902 (6th Cir. 2008) (quoting *Payton v. New York*, 445 U.S. 573 (1980)). It follows that an officer may enter a vehicle, which is afforded less Fourth Amendment protection than is a residence, to execute an arrest warrant. Thus, an officer may lawfully open a car door (and thus, in this case, place himself in a position to see a gun located in the door pocket) in order to execute an arrest warrant.

An officer may conduct a warrantless search of a vehicle (and any containers found therein) if there is probable cause to believe that contraband or evidence of a crime is secreted at some unknown location in the vehicle. *California v. Acevedo*, 500 U.S. 565, 594 (1991) (citations omitted); *United States v. Ross*, 456 U.S. 798, 824 (1982). Probable cause is a "fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). The Sixth Circuit defines probable cause as "reasonable grounds for belief, supported by less than *prima facie* proof but more than mere suspicion." *United States v. Bennett*, 905 F.2d 931, 934 (6th Cir. 1990). The Sixth Circuit has clearly held that "smelling marijuana [during a vehicle stop] constitute[s] probable cause to believe that there [is] marijuana in the vehicle." *United States v. Garza*, 10 F.3d 1241, 1246 (6th Cir. 1993); s*ee also United States v. McKinley*, 735 F. App'x 871, 873 (6th Cir. 2018) ("[The Sixth Circuit has] repeatedly held that the smell of marijuana establishes probable cause to search a vehicle." (internal citation omitted)). Once an officer has probable cause to search a vehicle under the automobile exception, evidence found may be seized pursuant to the plain view doctrine. *Texas v. Brown*, 460 U.S. 730, 738 (1983).

"The inevitable discovery doctrine, an exception to the exclusionary rule, allows unlawfully obtained evidence to be admitted at trial if the government can prove by a preponderance that the evidence inevitably would have been acquired through lawful means." *United States v. Kennedy*, 61 F.3d 494, 497 (6th Cir. 1995).

After reviewing the briefs, the above-stated standards, and the evidence and argument presented at the evidentiary hearing on August 23, 2019, the Court **DENIES** Defendant's Motion to Suppress (Doc. No. 31) for the reasons stated on the record at the conclusion of the evidentiary hearing.

IT IS SO ORDERED.

Eli Richardson

ELI RICHARDSON
UNITED STATES DISTRICT JUDGE